

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Serial No.: 10/804,576  
Confirmation No.: 7069  
Applicants: Frederick H. Miller  
Filed: March 19, 2004  
Art unit: 1615  
Examiner: Aradhana Sasan  
For: **MULTI-PHASE, MULTI-COMPARTMENT  
CAPSULAR DELIVERY APPARATUS AND  
METHODS FOR USING SAME**

Attorney Docket No.: 159.1001

MAIL STOP: AMENDMENT  
Commissioner for Patents  
Alexandria, VA 22313-1450

April 13, 2009

**COMMUNICATION RE: SUBSTANCE OF INTERVIEW**

Sir:

This communication is made in accordance with MPEP § 713.04 and 37 CFR § 1.133 concerning the personal Interview conducted between the undersigned attorney and Examiners Sasan and Woodward on April 9, 2009.

The undersigned expresses his appreciation to Examiners Sasan and Woodward for the courtesies extended in granting the interview. During that interview, the undersigned discussed (i) the Amendment dated February 12, 2009, including changes made to the claims via that Amendment ; (ii) the prior art relied upon by the Examiner in the Office Action dated August 13, 2008; (iii) the Information Disclosure Statement

submitted on February 12, 2009; (iv) the Capsugel Technology as presently understood by the undersigned; Microdose patents/patent filings; as well as additional information concerning the technology and multi-compartment products made of record in the Supplemental Information Disclosure Statement filed concurrently to this Communication.

During the Interview, the undersigned also briefly discussed the previously filed Expert Declaration of Dr. Bottom. It was respectfully submitted that the Nowak et al. reference was not properly combinable with the Zimmer reference, and that the Declaration of Dr. Bottom only served to buttress applicant's position. The prior art relied upon by the Examiner in the last Office Action was discussed. Detailed comments concerning that prior art are found in Applicant's Amendment dated February 12, 2009. With respect to the Zimmer reference, Applicant wishes to clarify with respect to the argument presented in that Amendment that the component therein consisting of cultures of viable bacteria may not be "solid" but do not appear to be "liquid", and that Applicant is not claiming merely a "capsule-in-a-capsule" structure.

During the Interview, the undersigned also briefly showed the Examiners industry articles/advertisements concerning multi-compartment technology and products, as well as a sample of a licensed product, dietXcentric™ dietary supplement.

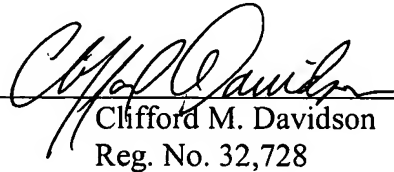
Any written material shown to the Examiner's is being made of record in the concurrently filed Supplemental Information Disclosure Statement. It is reiterated that this information is not provided as prior art, but is being submitted at the Examiner's request in order to complete the record and in order to provide the Examiners with information that they may consider helpful. The documents submitted herewith are submitted in order to provide the Examiner with information which may be useful to the Examiner's understanding of the presently claimed invention, and are not presently relied on9 in support of secondary considerations of non-obviousness.

An early and favorable action on the merits is earnestly solicited. The Examiner is encourage to contact the undersigned if any further questions arise during the review of the documents submitted by applicant on February 12, 2009 or at this time.

Respectfully submitted,

DAVIDSON, DAVIDSON & KAPPEL, LLC

By: \_\_\_\_\_

  
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